



**STATE OF CALIFORNIA, COUNTY OF SIERRA
BOARD OF SUPERVISORS
MINUTES
SPECIAL MEETING**

Lee Adams, Vice-Chair, District 1

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The Sierra County Board of Supervisors met in special session commencing at 9:00 a.m. on August 3, 2015, at 1999 Ridge Road, Pike, CA. The Board will reconvene at 10:30 a.m. in the Courtroom, at the Courthouse, Downieville, CA. This meeting was recorded for posting on the Board of Supervisors' webpage at www.sierracounty.ca.gov.

ROLL CALL – Site Visit

Present: Lee Adams, Supervisor, District #1
Peter W. Huebner, Supervisor, District #2
Paul Roen, Supervisor, Chair, District #3
Jim Beard, Supervisor, Vice-Chair, District #4

Absent: Scott A. Schlefstein, Supervisor, District #5

Staff: Heather Foster, Clerk-Recorder
Jim Curtis, County Counsel
William Abbott, Outside Counsel
Tim Beals, Director of Planning and Transportation

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1. 9:00 A.M. **SITE VISIT OF PROPERTY OWNED BY INTELLECTUAL INVESTMENTS, LLC**

The Board of Supervisors conducted a site visit of the property owned by Intellectual Investments, LLC, located at 1999 Ridge Road, Pike, CA from 9:08 a.m. to 9:38 a.m.

At 10:41 a.m. the Board reconvened in the Courtroom, Courthouse, Downieville, CA.

ROLL CALL

Present: Lee Adams, Supervisor, District #1
Peter W. Huebner, Supervisor, District #2
Paul Roen, Supervisor, Chair, District #3
Jim Beard, Supervisor, Vice-Chair, District #4

Absent: Scott A. Schlefstein, Supervisor, District #5

Staff: Heather Foster, Clerk-Recorder
Jim Curtis, County Counsel
William Abbott, Outside Counsel
Tim Beals, Director of Planning and Transportation
Brandon Pangman, Assistant Planning Director

REGULAR AGENDA

3. **10:30A.M. PUBLIC HEARINGS - FIRM FOUNDATION ACADAMY, INC LAND USE DEVELOPMENT PROJECT**

3.A. Conduct a public hearing on consideration of a zone amendment from General Forest (GF) to Public Service (PS) District, filed by Firm Foundation Academy, Inc., applicant and Intellectual Investments, LLC, landowner on recommendation of the Planning Commission. The project site is located in the community of Pike more particularly described as APN 006-140-013 and 1999 Ridge Road, Pike, CA.

3.B. Conduct public hearing on the appeal filed by Michael M. Miller on the Planning Commission's approval of a special use permit and mitigated negative declaration for a post-secondary school and residential boarding component and recommendation on a proposed zone amendment, filed by Firm Foundation Academy, Inc., applicant and Intellectual Investments, LLC, landowner. The project site is located in the community of Pike more particularly described as APN 006-140-013 and 1999 Ridge Road, Pike, CA.

County Counsel recapped the public hearings regarding the rezoning and appeal of Mr. Miller for a Special Use Permit and recommendation for a zone amendment held

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on April 29, 2015. County Counsel noted the previous hearings were combined and will operate again in this format. Subsequent to the meeting on the 29th the Board took the matter under submission and reconvened on June 2, 2015 wherein the Board made several motions of intent: 1) to approve the rezoning application; 2) approve the environmental document/mitigated negative declaration; and 3) approve the special use permit in a modified fashion that would eliminate the residential component and the Board directed staff to prepare findings. Subsequent to the June 2nd meeting, the Board received a letter from Mr. Cook, the attorney for the applicant, objecting to what they felt were some irregularities with the Board's proposed motions of intent. He took this as potential threat of litigation and convened in closed session to advise the Board with regards to his assessment of the issues raised within the letter.

County Counsel referred to comments in Mr. Cook's letter pertaining to whether there were statements made or information obtained by the Board that was outside of the public hearing process; information that would be referred to as ex parte in nature. County Counsel continued to explain the importance of making sure that all parties have a fair hearing.

County Counsel noted subsequent to meeting in closed session, the Board agreed to reopen the public hearings in order to allow all parties an opportunity to further address the Board with information that they believe may have been inappropriately submitted outside of the public hearing process. Part of this includes the responsibility of the Board to disclose any information that arguably bears upon their decision making.

Mr. Bill Abbott, Outside Counsel for the County explained all of the evidence is cumulative and the focus of today is on evidence that is new to the record and hasn't been heard by the Board of Supervisors.

County Counsel briefly reviewed the site visit the Board of Supervisors took of the property, noting to his knowledge there was no lobbying on either side to individual Board members.

The Clerk entered the following exhibits into the record:

Staff Exhibits:

Exhibit 5 – Email dated May 18, 2015 with attached comments from the Department of Water Resources (DWR) - 5 pages

Public Exhibits:

Exhibit V – Letter dated June 9, 2015 from Michael Cook, Attorney for FFA – 5 pages

Exhibit W – Letter dated June 30, 2015 from Michael Cook, Attorney for FFA – 2 pages

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Exhibit X – Firm Foundation Academy Site Plan – submitted by Andy Cassano – 1 page

Exhibit Y – Firm Foundation Academy Floor Plan – submitted by Andy Cassano – 1 page

Exhibit Z – Email from Alison Deliman dated July 30, 2015 – 1 page

Exhibit AA – Email from Michael Miller dated May 28, 2015 – 1 page

Exhibit AB – Email from William Adasiewicz dated May 28, 2015 – 1 page

Exhibit AC – Letter from William Adasiewicz dated August 3, 2015 – 3 pages

Exhibit AD – Letter from Michael Miller to Gilbert & Jean Hakim dated July 29, 2015 – 2 pages

County Counsel noted this is a continued hearing and is an opportunity to introduce anything new.

The Board moved to consolidate the two public hearings.

APPROVED. Motion: Roen/Huebner/Unanimous Roll Call Vote: 4/0/1 (Supervisor Schlefstein ABSENT)

Mr. Abbott explained that if the Board received any information outside of the public hearing and was not made part of the administrative record and believes it is relevant to their decision, the Board needs to disclose it.

No disclosures were made by the Board.

Mr. Abbott further requested Mr. Pangman to summarize Exhibit 5, information from the Department of Water Resources.

Mr. Brandon Pangman, Assistant Planning Director explained the night before the on April 29th hearing staff received a comment from Hydrogeologist Steven Baker (Exhibit E). Staff didn't have an opportunity to respond, but sent this to the CEQA consultant and to the Department of Water Resources (DWR) to evaluate and provide feedback. Unfortunately, a response was not received from DWR until long after the April 29th hearing. The DWR has since sent a detailed response contained in Exhibit 5.

Mr. Pangman continued to summarize Mr. Baker's letter which calls into to question the methodology used by staff and the CEQA documents on the issue of sufficient water quality of the wells, the use of the school, and the demand on their wells adversely affecting neighboring wells. The letter also claims that staff didn't do an

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adequate job of looking at the historical use of the school and extrapolating the future needs of the FFA project. Mr. Baker's letter goes into an analysis of his own of what he feels is a sustainable use of groundwater for the site based on precipitation rates.

Mr. Pangman clarified that he feels this is an inaccurate representation of what the record shows as there were licensed engineering reports, well pumping reports, data, etc. This was the basis of their determining that there wasn't a significant impact. Mr. Pangman also pointed out that these reports took a very conservative estimate.

Mr. Pangman continued to review in detail the methodology used by Mr. Baker and concluded that in staff's opinion they don't feel Mr. Baker's argument represents a fair argument based on substantial evidence that there is insufficient groundwater available to this project or that it may adversely affect neighboring wells and property.

Mr. Pangman also addressed a comment made by Supervisor Adams at the June 2, 2015 meeting with respect to page 38 of the CEQA Initial Study (BOS Exhibit 1, PC Exhibit 19), and a 56% increase in population having less than a significant impact, noting he agrees a 56% increase in San Francisco would be significant, however he doesn't believe this is a fair way to equate it here. For, example, the Downieville High School graduation had four seniors graduating this year, a 50% increase would be 6 graduates. He believes we are much closer to the latter example versus the San Francisco example. If you look at the number of people in the Pike area and add in the maximum capacity of the project, even with the phase 2 buildout, you are still looking at a less than significant increase in population. There are a little over 3 people per square mile in Sierra County and in the General Plan designated influence area for the community of Pike there is 1280 acres and the increase would be 0.11 people per acre; this is much less than the average in the County.

Mr. Pangman continued to explain the issue with CEQA is not whether there is a significant population increase, rather it is whether there is a fair argument for the potential for direct or indirect physical impact on the environment. Mr. Pangman clarified that there is a recognition of a population increase in the initial study, however there are no offsite improvements, so they concluded there is no need for more housing or infrastructure improvements. Therefore, the physical impact on the environment is negligible even when you take into account the onsite improvements of the project.

Mr. Pangman added that if anyone believes there are any potential fair arguments in the record or in their minds that is not yet resolved as pertaining to the CEQA document please ask and he will do best their best to answer them.

In response to Chair Beard, Mr. Pangman indicated that based on Mr. Baker's report, Mr. Baker did not do a site survey. It appears he was reviewing County documents that are in the record and he did his own research on precipitation rates, etc. in the report.

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Mr. Michael Cook, Land Use Attorney for FFA requested clarification regarding the two emails dated May 28th and May 29th (Exhibits AA and AB) and whether they were part of the June 2, 2015 meeting.

The Clerk briefly explained these emails were sent to staff and were received after the close of the April 29, 2015 public hearing and were not allowed into the record.

In response to Mr. Cook's inquiry, the Clerk clarified that Supervisor Schlefstein recused himself from the proceedings.

Mr. Cook further requested an explanation as to why Supervisor Schlefstein recused himself.

County Counsel explained the County doesn't feel they need to challenge any Board member to offer an explanation if they chose not to participate.

Mr. Cook further pointed out that his letter dated June 9th (Exhibit V) really tells the Board that they didn't get a fair shot and things were not run the way they should have been by the Board. Also, Supervisor Schlefstein didn't state much at the April 29th meeting, however he said a lot and made the motion at the June 2, 2015 meeting. He accepts for purposes of the hearing today that Supervisor Schlefstein has chosen to recuse himself, however this doesn't makes him less troubled on how things proceeded prior to his letter.

Mr. Abbott suggested conducting the hearing. The Board members have stated on the record that they haven't entertained any relevant information outside the contexts of the administrative record.

Mr. Cook again referred to his letter and questioned if there were any ex parte communications, noting he is willing to state for the record that he, the applicant, and the engineer never had such communications. Mr. Cook questioned if this is true of the opposition having individual meetings with Board members.

Supervisor Adams noted he has not had any communications that were in regards to evidence off the record. However, for full disclosure he has been called a few times from a member of the Pike community asking about when the Board was meeting and he referred them to County Counsel. He also responded to a call and email last week from Mr. Baker regarding a program in Nevada County that he would like to expand to Sierra County making homeowners aware of water use during a drought. He informed Mr. Baker that it was an inappropriate use of a public agency to endorse his program and suggested emailing the information to himself, Director Beals, and Mr. Pangman. He also received an email from Alison Deliman (Exhibit Z) which was forwarded to County Counsel and the County Clerk.

Supervisor Roen indicated for the record he had none.

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Mr. Cook continued to note the staff report continues to be outstanding and they are very appreciative of this. They are also comfortable with the approved mitigated negative declaration and would be willing to defend it. He also appreciates the Board coming to see the school as they wanted the Board to get a sense of what's on the site and how unique it is. Again, the project description clearly defines this as a school and if they violate any of the conditions or go outside of the permitted use, the County can revoke the permit. All of the rumors are smoke that clouds the issue; the issue before the Board is will a school be an appropriate facility for the site including the overnight component. The Board could add more language or conditions, but he doesn't believe it's needed.

Mr. Cook also clarified there are no impacts on traffic as the County has adopted level of service C. The two roads impacted are Ridge Road and Highway 49. Ridge Road is a level of service A and it would take 900 more cars to make it a level B, and 1300 more cars to make it a level C.

With respect to water there were multiple studies done on the water for 75 people and as if they were going to irrigate. They have since proposed 50 people and accepted conditions to not irrigate outside during drought conditions and to do well monitoring and logs. Mr. Cook continued to clarify that there is no water impact as the well is rated at 26 gallons a minute and produces 32 thousand gallons per day. They only need 26 thousand gallons per day at 75 people - they are reducing to 50 people and volunteering not to do outdoor irrigation which is 73% of the 26 thousand gallons.

With respect to the septic system, they also have multiple studies. The system was sized for 210 kids, and they will have 50 people. They also have a 20 acre parcel so it is not an issue if they if need to increase this.

Mr. Cook added he also doesn't buy that there will be a population impact. They are not bringing in hooligans, rather these are adults studying history, literature and philosophy for 12 to 14 hours a day. Also, the County's population count in 2000 was 3555 and in 2010 there was 3240, so the County lost 310 people. The US Census Bureau is only projecting 3003 from 2010 to 2014, so the County is losing 80 people per year. This 50 person project is not going to create an issue and they are coming in to use a dilapidated abandoned school facility as a school. The Census also states the County only has 198 non-public jobs. They might be able to create 10 jobs in the County which is 5% of the county employment.

Mr. Cook concluded his comments noting this is a school facility and he believes they can make this a productive use. It will not create impacts and can be controlled through the Board's conditions. Mr. Cook further requested the Board either approve or deny the project with the appropriate findings and they will go from there.

Mr. Andy Cassano, Land Planner/Surveyor for Nevada City Engineering and representative for the Firm Foundation Academy, requested keeping the front lawn alive in terms of outside watering. Mr. Cassano continued to refer to episodes of the Little

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House on the Prairie and Bonanza, noting he feels like he is in one of those episodes where a stranger comes into town and are not welcome, but somehow within one hour Laura Ingells convinces the town folk they were too quick to judge and find that they were an asset to the community and not a liability. Mr. Cassano added we live in a scary world, but he serves his country to stand up for America, freedom of education, freedom of religion and property rights and believes this has been the course of the Board of Supervisors. He believes whenever we make decisions on fear or concern, then some very bad people in the world are starting to win. Mr. Cassano concluded he appreciates the Board's time in visiting the property and hoping after reconsideration of all of the facts and fairness that they can gain the Board's support.

Mr. Mike Miller, Appellant indicated he represents 17 people in this appeal who reside in this County and there is no fear with these people and it doesn't apply here. Intellectual Properties is the real property owners; we don't know the relationship between the property owner and the applicants, FFA. Mr. Miller added it's disgusting to think that the people of Pike are running around with religious or racial undertones, etc. He has not heard this and any misconception of FFA has been brought on by the Jones' and they have used classic ways to get the entitlements they are after. He also likes Bonanza, these strangers that were mentioned were called carpetbaggers or predators.

Mr. Miller continued to review his background when serving on the Planning Commission and the School Board. Mr. Miller noted he believes Mr. Cassano misspoke regarding the trees that had to be cut down for the septic reasons, the trees didn't need to be cut down and the Board didn't see many of the other trees that were cut down on the property and on an adjacent property owner's property. Also, when Mr. Cook graciously volunteered to help defend it, so will everyone else if the decision goes the way it should go and deny the project. Mr. Miller added those that live in Sierra County know this is an abusive process and suggested reading the emails between Mr. Pangman and the applicant.

Mr. Miller continued to note he never saw the water response until today and this is hard to analyze; he knows Mr. Baker did a good job. Mr. Miller also referred to his gold mine operation which has 35 miles of tunnels and is in a fractured quartz aquifer. His PG&E bill during the drought for pumping has dropped from 4,000 gallons to 1,500 due to a slowdown in the water. He knows what a fractured water system looks like; it loses its water at different elevations, times, etc. and might be something the water experts need to revisit. Mr. Miller clarified that Mr. Baker's letter was received timely.

Mr. Miller referred to lobbying, noting he didn't lobby anyone, but there was some lobbying going on to Supervisor Adams from Jim Buckbee regarding a building for fire protection. Mr. Miller added the appellants want you to deny this project and he believes the FFA does as well as they want a decision. The Board had 900 pages of review which is unusual and he never had this when reviewing the Lakes Basin issues or Balls Ranch issue because the people cared. The people of south western Sierra County do not feel they were treated fairly by staff.

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Mr. Miller continued to express concerns with CEQA not having been vetted properly including the deer migration and growth inducement; not meeting the fundamental goals of the General Plan including the required fiscal and economic impact analysis required of all discretionary land use improvements; and concerns with water.

Mr. Miller referred to staff's emails and the abundance of concern with Mr. Pangman trying to help the applicant and the original School was for kids from the area and was totally different than what is being requested.

Mr. Miller continued to address the impact on traffic which is 24 hours a day, 7 days a week. Mr. Miller introduced to two pieces of wood, noting the smaller piece reflects the use of the school and the larger piece reflects the application by FFA which is a 500% larger use. With respect to Ridge Road the people in the Pike area are very vulnerable to theft and the traffic puts a different element on the nature of the community and the responsibility of the people who live there.

Mr. Miller concluded the school that was there failed and it's now a building. He doesn't believe the Board wants to change the whole nature of the community over a building. The applicant is coming into an area that doesn't have the infrastructure to support it and they got the property cheap. There isn't a school there anymore so we are going to have to go back through the planning process and this should go back to General Forest with residential 5 to 20 acre parcels.

Mr. Miller added there is no beneficial interest for Sierra County, there wasn't a fiscal impact study and they know it's going to impact the Sheriff's Department, Road Department; it's a drain on our resources. Also, FFA is presenting themselves as the victim; they are not victims they are realistic business people. Mr. Miller further referred to the pages and pages of background on Intellectual Properties and FFA, noting there is very limited information on schools.

Mr. Miller further distributed and read a letter he sent to Gilbert and Jean Hakim dated July 29, 2015.

The Clerk entered the following document into the record:

Exhibit AD – Letter from Michael Miller to Gilbert and Jean Hakim dated July 29, 2015 – 2 pages.

Mr. Miller continued to note that Sierra Pacific Industries (SPI) doesn't want this and they are one of the largest landowners in the US and have a huge economic interest in the County. The company he runs is over 100 years old and is a company that was one of the largest nongovernment employers in Sierra County and this is not in their best interest either. Everyone is worried about this as it is a drastic change. Mr. Miller concluded his comments, noting they want the Board to deny this project. The owners will not lose any money as he knows there is another use for this property.

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Supervisor Adams responded to Mr. Miller's statements regarding comments made to him by Mr. Jim Buckbee during the site visit, noting for the record he was asking Mr. Cassano about a building that was on the property line and Mr. Buckbee volunteered that the small building in the parking lot with an antenna on it housed a radio system belonging to the Forest Service and the Pike Volunteer Fire Department. Mr. Buckbee also repeated this information to the entire group. With respect to Mr. Miller's comments regarding peace officers, cops are few and far between in the County and between the Sheriff's office and CHP there might be 11 peace officers living in Sierra County and Mr. Miller knows how many are living in Pike.

The Board took the noon recess from 12:15 p.m. to 1:20 p.m. and reconvened with Supervisor Schlefstein absent.

The Board received comments from the following persons:

Ms. Grace Knowles, Pike in opposition noting there are still 82 residents in Pike opposed to the FFA and they have spent the last 17 months presenting factual arguments against a special use permit to the FFA. The favorable comments have come from Mr. Cassano and Mr. Cook who are paid representatives and are obligated to the FFA, as they should be. She and the other residents are obligated to the General Plan which in 1996, 90% of the Pike residents wanted Pike to remain a total residential community without any businesses. FFA by their own brochures, website, oral statements, etc. state they are a software company designed to test software - they are a company and the County doesn't allow businesses in Pike.

Mr. Joshua Gwiazda, Pike in support of FFA's efforts to take what was once the crowning jewel in Pike as a school back to what it once was. He is an educator and would like to see the school, which was a dilapidated eyesore, turned back into a school. He is a little disappointed in the community members in taking this opportunity and turning it into more of a personal matter. Mr. Gwiazda added he believes this is a great idea and hopes some of the others in Pike will make themselves heard. He would like the Board to follow the law and to make a fair decision.

Mr. Rowland Robertson, Pike read a letter from Mr. William Adasiewicz (Exhibit AC) into the record.

Mr. Robert Cole, Pike in opposition due to concerns with water. Mr. Cole explained about 3 1/2 months ago he lost all of the trees on the high north east corner of his property which is in a direct line of the FFA school. The FFA removed their trees due to pine beetles getting into them due to lack of water and being weak. This made him worry about his well running dry, so he installed a 5,000 gallon tank on his property. Mr. Cole added that if he loses all access to water then his property is worthless and he has invested as much as FFA.

Supervisor Adams addressed Mr. Cole's concerns regarding his property being valueless without water, noting they are asking the Board to make the FFA's property

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worthless if they can't use the water; they are asking the Board to infringe on the FFA's property rights. Supervisor Adams further questioned if FFA decided to sell the property and it is made into four home sites, how much water would those homes take; why are we just stopping this project.

Mr. Cole noted he doesn't know how much water is down there.

Supervisor Adams continued to note he is assuming there are other vacant parcels in Pike that could be built on tomorrow, and the question is should the Board stop anyone else from building in Pike because of the water consumption.

Mr. Cole noted when he first moved into the area he bought into Wild Rose Meadows and the properties he bought were 5 acres and at the time they could dip below 10 acres, however since then all of this has been cancelled. Mr. Cole added that as long as it meets the conditions and requirements of the General Plan he has no argument with it.

Supervisor Adams referred to the sign located in the gym, noting this property was advertised for sale and he heard nothing from the community about it. In fairness to the communities, all have been concerned about economy and lifestyle. He understands Pike's concern of impact to lifestyle, but at same time anyone could have bought this property and done anything with it. He is hoping the water issue can be mitigated through some of the conditions, however is FFA necessarily going to use any more water than 4 houses would.

Mr. Cole noted he doesn't know, his concern boiled down to water. He has issues with water and it indicates to him that something is happening to the water and all he can do is make certain precautions and steps, regardless he is not moving.

Ms. Knowles noted if FFA split the parcel into 4 parcels she doubts anyone would move to Pike with children and there would probably be 2 people per parcel.

Supervisor Adams further questioned if there was any talk about this property in the community when it went up for sale.

Ms. Knowles indicated the property was originally for sale for almost \$2 million, then a few years later it was reduced to \$1 million. Had they known it was going to be sold for \$500,000, there were enough people interested in purchasing the property for storage for the fire department, etc.

Mr. Don Van Der Leest, Pike noted FFA is going to have 75 people living there full time, and since the Board doesn't want to deny them their right can he move 75 people in.

Supervisor Adams responded that Mr. Van Der Leest's property is zoned different than this property and it has to be zoned in compliance with the General Plan.

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Mr. Gwiazda indicated it was a school, it was advertised and sold as a school and the best possible scenario for the community is that it will continued to be a school. The only argument he has heard that has any validity is the water issue, however if anyone in the community is concerned with water they should look to the medical marijuana agricultural industry as any of the gardens in the area are going to use more water in one growing season than this school will in one year.

Supervisor Adams referred to comments about race noting while he had heard some things, it wasn't until this weekend going through the background that he found a comment that this could end up being an "indoctrination school for extremist". Supervisor Adams added he wants everyone in the room to know he did read this and would love to hear any statement if there is something to prove/support this statement, but if not, there is no merit to it.

Supervisor Adams added if the permit is violated it can be revoked and if there is any unlawful activity, there would be more than Sierra County government involved in an investigation.

County Counsel clarified the comments Supervisor Adams was referring to was a letter submitted by the public to the Board and was not from staff or the applicant and is on page 236 of Board's packet.

Ms. Helen McGibben, in support of the school as she lives directly across from the school and believes they've done a wonderful job. In regards to water issues, it's been a drought for several years. Her understanding is the water is in fractures and there is no way of proving that someone is taking water from someone else. In a drought year trees die and people's wells dry up. She thinks people are entitled to property rights and believes property rights are important to everyone in the room.

Supervisor Adams referred to the picture of the school (Exhibit X) and questioned if the residence right across from the driveway to the school was Ms. McGibben's.

Ms. McGibben indicated it is; it is the closest property to the school.

Ms. Nancy Finnie, Alleghany in support noting she has heard a lot of confusion and misunderstanding about what a school is. Ms. Finnie referred to an article from the New York Times pertaining to a survey regarding traditional online courses and found that students who enroll in online courses are more likely to withdraw than those attending traditional college classes and also found that students in hybrid courses, both that blended online instruction with a face to face component, did as well academically as those in traditional courses. What FFA is going to have is the hybrid course with a great deal of interaction with instructors. This is a real interesting project; it is innovative and she would like to think Sierra County would welcome software development education as FFA does. FFA will also seek accreditation from the State of California for the courses they offer and in order to do so they have to be parallel with other universities. Ms. Finnie

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concluded her comments noting she worked for 28 years at the College of the Sequoias and really supports what FFA is attempting to do.

Mr. Shaun Felton-Price, Pike in support as he grew up in the Pike area and realized back in the 80's how fortunate he was to grow up there and finds it discouraging that so many are against this project. He had the opportunity to work for the FFA for a year. He likes the Jones' and they invited the public to dinner once a month for a year. It's unfortunately that those opposed to the project didn't go to these dinners.

Mr. Felton-Price added he realizes we are in a drought and we need to work together. His well produces 2 gallons per minute and is on 72 acres. He was unaware that SPI was against the project and would think being a large landowner with a low tax base they wouldn't say much about a small project like this. In regards to cutting down trees on private property, he was in charge of masticating and clearing the ladder fuels and was going off of an established state record of survey. The FFA hired someone to resurvey the property and it was discovered they were out of bounds. This was to the private property owner's benefit as they received additional property. There were no trees cut only ladder fuels as the masticator does not cut trees.

Mr. Felton-Price continued to note he is in favor of the FFA project and also understands there is another pilot school operating as a seasonal college campus in Sierra County, so we already have an established school and could follow some of their guidelines and make this project happen.

Unknown Pike resident in support of the FFA project.

Supervisor Adams questioned if staff had any comments pertaining to Mr. Adasiewicz's letter (Exhibit AC) with respect to his concerns regarding whether the zoning is proper for a school and the issue of TOT (Transient Occupancy Tax).

Mr. Abbott noted with respect to the TOT he is not familiar with the County's TOT rule, but this is normally applied to short-term rentals and he is not aware of any schools subject to TOT as it is not a common practice.

County Counsel indicated that whether the TOT is applicable or not shouldn't affect the underlying questions of the validity of the rezoning or issuing of the special use permit. If the law requires paying TOT then the County will deal with this, but he doesn't see this as a basis in affecting the Board's action to approve or deny the special use permit.

Supervisor Adams referred to Mr. Adasiewicz's comment regarding not being able to find a private school with the same zoning given to FFA out of 4200 schools in the state.

Mr. Abbott responded that California has 50 plus counties and 400 plus cities and all of them have different zoning codes, so he doesn't know how you can comprehensively look at 4000 school sites to make this determination.

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Mr. Abbott continued to address the issue raised regarding public versus private ownership noting every County's General Plan and zoning code is unique to that jurisdiction. The focus is on the facts and the impacts of an activity. The issue as to whether or not this is a private entity versus a public entity is digression away from what the land use proceeding should look at which is the impacts of the project. Mr. Abbott further suggested steering the Board towards the consideration of the evidence that relates to the compatibility of the project in this location rather than the ownership question; land use decisions run with the land.

The Chair called for closing statements from the applicant and appellant.

Mr. Cook noted the community has expressed concerns over the last hearings that they didn't disregard and came back with a compromised position to reduce from 75 people to 50 even though the documents state the 75 didn't create impacts. They also subjected themselves to no watering and monitoring. He would hope the neighbors would have some comfort that they are the only ones in the region restricted from watering outside and required to monitor and provide data to the County. They plan to be a good neighbors and think if they get to an approval of the modified downsized proposal they will prove the County correct in supporting them and will satisfy their neighbors.

Mr. Miller indicated what he heard Mr. Abbott state is compatibility, this is definitely not compatible with the General Plan and with the intent of the people of Sierra County. He is not complaining about a school, it is about the overnight component which is not allowable in the General Plan. The Board did a wonderful job trying to give the applicant other alternatives.

Mr. Miller continued to refer to comments regarding 2.3 people per property as a percentage in the County documents, noting 4 parcels is 9.2 which is an 80% increase in population. He also believes there is restrictions on the number of residents on a single family residence.

Mr. Miller also referred to the statement about the school being sold as a school, noting it was sold as a vacant property. With respect to property rights, he is a big advocate of property rights and it goes both ways. As far as the money goes, he was an economics major and he didn't see anything on the economic analysis which was required when the 1996 General Plan was passed. The people will remove any loss from the Hakim brothers and the proposals he has heard will make them whole.

Mr. Miller continued to explain the property owners got a sweet deal on the property and if they can get a use permit it will increase the value of the property. He is only one person representing 90 and this is not compatible with the community.

The Director briefly reviewed the motions of intent made by the Board on June 2, 2015 including a motion to modify the use permit to eliminate the residential occupancy; a motion to find the CEQA documents adequate based on the proposed changes; a

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motion to approve the zone amendment; and a motion to authorize a maximum of 87 daytime occupants, students and staff in addition to the site caretakers. At the conclusion of the hearing the Board also directed staff to meet with the applicant and the appellant which is the basis of Staff Exhibit 5 (Clerk Note: Staff Exhibit 4). The memo suggested a third version of a project which is a reduction of overnight occupancy to 50 and additional conditions requiring monitoring of wells, validating the operation of the septic system, making a change to solid waste services, requiring fire emergency medical and security plan, and also established a term of 20 years for the school.

The Director continued to refer to comments regarding the Baker study not being timely filed, noting it was timely filed, was labeled as an exhibit, and was part of the record.

The Director also responded to testimony given today, noting what is in evidence is the General Plan as it is currently structured and adopted and directs the rezoning of this property to Public Service (PS). The PS zone was prepared and adopted to implement that General Plan designation and that zone has permitted uses and conditional uses. With respect to residential occupancy, the appropriateness of a public, quasi-public or private school are all contained in the staff report and are in evidence today.

With respect to Mr. Adasiewicz statements regarding 4200 schools in the state, every County General Plan and zoning is unique. From a staff standpoint, on page 31 of the staff report (BOS Exhibit 1) there are 4 findings outlined that express the findings that are proposed for General Plan and zoning consistency and address the fact that staff feels the zoning and uses are appropriate.

With respect to the issue with TOT, there are a number of examples throughout the County including the Sagehen Field Station, the San Francisco Field Station, etc. where people are occupying sites for overnight purposes for a limited duration. If there is an opportunity to apply TOT to this property the obligation for this is with the Treasurer/Tax-Collector which is within the County Code.

In regards to the well permit process, it is currently a ministerial act and there is no CEQA requirement for a well permit. In the Pike area there have been a number of permits issued for domestic wells that are not serving a residence and many are associated with cultivation of agricultural crops.

In regards to concerns with the designation of the property in Pike the current designation in the General Plan in Pike is 5-10 acres and the Wild Rose Meadows was a unique property and was given an R5-10x designation which essentially freezes those parcels so they cannot proceed with a density higher than this.

With respect to what the Pike community submitted during the 1996 General Plan process, the Pike preferred plan offered up a number of conditions including no permits required for uses, no conditional use permits, no fees, no regulatory oversight, and a certain number of uses would be allowed. The Director added he would be happy to

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make this document available so everyone understands what was requested by the petition signers of the Pike community and what was adopted by the Board in the current General Plan.

The Clerk entered the following into the record:

Exhibit AE - Two wooden blocks submitted by Mr. Michael Miller

At 2:40 p.m. Chair Beard closed the public hearing.

Mr. Abbott provided an overview of the process and the decisions that need to be made including a determination as to the adequacy of the negative declaration which is based upon substantial evidence; the zoning decision of which the County has a statutory obligation to zone consistent with the general plan; and the terms and conditions, if any, under which a use permit will be granted.

Mr. Abbott noted there are prior motions of intent which are not binding and as far as he is concerned the Board should make new motions or reintroduce the prior motions.

The Board made a motion of intent to approve the mitigated negative declaration.

APPROVED. Motion: Adams/Huebner/Unanimous Roll Call Vote: 4/0/1 (Supervisor Schlefstein ABSENT)

The Board made a motion of intent to rezone the subject property to Public Service (PS) that is consistent with the Sierra County General Plan.

APPROVED. Motion: Adams/Huebner/Unanimous Roll Call Vote: 4/0/1 (Supervisor Schlefstein ABSENT)

The Board made a motion of intent to issue a use permit with the following restrictions: the facility is to operate within the existing foot print, no new construction outside of the existing footprint; outside watering on front lawn only during periods of time where the planning department believes it is appropriate for the water conditions; a maximum of 50 occupants (students and staff) and 4 for the caretakers quarters; school language be written to state what the facility is operating as including descriptions as to its software development and/or onsite school; the overnight use capped at 50 is authorized for a 3 year period beginning the first day students begin residing on the property; and this is in addition to the 19 conditions of approval in Exhibit 5 (Clerk Note: Staff Exhibit 4).

In response to Mr. Pangman's inquiry, the maker amended the motion to include 50 students, 4 staff in the facility and 2 caretakers.

The Director noted there are 3 versions of conditions on the table: 1) the Planning Commission's recommendation; 2) the Board of Supervisors' actions; and 3) the negotiated changes to the conditions in Staff Exhibit 5 (Clerk Note: Staff Exhibit 4). The

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Director added there are a number of staff associated and if it was 50 this included staff and 4 was given to the caretaker uses. The Director further questioned what the Board's intent would be with respect to the 19 conditions and are they still in place.

Supervisor Adams noted his intent was those conditions not otherwise superseded by the others, would be included in the permit that comes back to the Board; those that were part of Exhibit 5 (Clerk Note: Exhibit 4).

Supervisor Adams added after listening to everything and in understanding CEQA and planning rules he has a responsibility to the County, all property owners and complying with existing state law as represented by Counsel and in balancing all of those this is the best he has to offer.

It was clarified that the school would be a 20 year term and the overnight component would be for 3 years which doesn't begin until they actually have residents overnight.

Mr. Abbott clarified the Board can put reasonable time limits on permits. The Board has heard testimony that deals with compatibility with this use compared to surrounding uses and much of it pertained to the overnight component. There are a number of conditions staff has developed designed to deal with land use compatibility and he believes the time issue is relevant and allows the applicant to prove themselves as a good neighbor. At the end of the 3 year term or 20 year term the applicant can seek a new permit. Mr. Abbott added the courts tend to look at the renewal not from a blank canvass standpoint, so his advice is 3 years from today he may be a bit more conservative.

Discussion ensued pertaining to allowing additional comments.

In response to Supervisor Roen's inquiries, Mr. Abbott explained the permit process is defined in the County Code and the applicant would have to file for an application for a permit and at that time the Board would have updated information pertaining to compatibility of the use. Mr. Abbott added the courts may view the applicant as having a more protected right at that time.

Mr. Abbott and County Counsel also clarified the applicant would have to go through the CEQA process again.

Mr. Cook addressed the 3 year condition, noting he understands the point of the motion but this is a \$200,000 process and has been a 3 year process to get to where they are today. The residential component is another investment and they need to have some period of time to work the investment back out. They were at 20 years, his client wants to stay at 20; he would propose 10 as 3 years is shorter than anything he has ever seen considering the expenditure that has to be made.

Supervisor Adams explained this is an early review trigger to make sure things are going well.

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Mr. Cook noted the Board has the ability today to properly condition them to make sure they do what the Board wants done while on the other hand they need assurances that the use permit they get vests so they can burn off the investment they make. He doesn't believe they can do this in 3 years as they may have a different Board 3 to 5 years from now and different political winds blowing. The Board has them by the conditions and can impose a term, he is just trying to point out that 3 years is really short for someone to spend hundreds of thousands of dollars. Mr. Cook concluded his comments noting times change and people change and they don't want to have to comply with different rules, but will comply with the rules the Board imposes right now.

Supervisor Adams questioned what happens if this is not a good fit for the community and the clients don't comply with the rules. He is trying to give the community reassurance that we are in fact going to monitor this and see how things are going in 3 years.

Mr. Cook noted he believes this is a balancing act and can be accomplished through the imposition of conditions and the oversight authority the County has. If any of their customers/clients don't comply the County has an enforcement mechanism. He understands some number, but 3 is way too short as they have to expend too much money upfront.

Mr. Miller indicated they didn't know they lost the overnight accommodations until today. The future permit is discretionary. We are a unique place and none of the applicants are familiar with our cultures and with what we do. If it is all going well, he will be the first to high five them, but it doesn't seem like it will go well and we don't have adequate information to determine this. He believes 3 years is too long. This really puts the enforcement on the neighborhood.

The Director questioned if Mr. Cook understands the proposal to bifurcate the term; a 20 year term for a school and a 3 year term for the overnight component.

Mr. Cook indicated he understands, however if they don't have the overnight component they have nothing. This is too short for a use permit and is a lot of money to invest. Mr. Cook added the County can shut them down any day if they are not complying with the use permit.

Mr. Abbott indicated that in some respects he concurs with Mr. Cook's comments. It's true that if you don't put a time limit on the permit the County could exercise the powers to revoke the permit if there is noncompliance. In his experience putting a limited term on a use has a sobering guidance to the applicant that they really have to follow the rules. It is difficult for an applicant to make an investment in a project and try to amortize the investment. The conversion cost to add the residential component to him on a very subjective basis, would be expense, but it doesn't strike him as being a significant impact versus having to deal with building on unimproved land. Mr. Abbott added that this Board

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doesn't guarantee an investment, this is a business decision and if they want to legally challenge the County on a 3 year limitation, this is their prerogative.

Supervisor Adams noted the only alternative is to reduce the 20 year to a shorter period, possibly 10 years and adding a condition for this Board to hold an annual public hearing with the community on how this is going. He is open to suggestions from his colleagues or staff on alternatives.

Mr. Abbott reviewed another option of an annual report back from staff to the Planning Commission once a year. The purpose is to advise the Planning Commission as to how the proposed holder of the permit has been functioning over the prior twelve months and is a preceding before the Planning Commission so the public can attend and offer input. If on the basis of the input the jurisdiction learns there are significant issues with compliance with the terms and conditions they can proceed with some sort of permit revocation.

County Counsel added he thinks one of the other beneficial effects of this process is it also provides an ongoing effort on an annual basis to establish how well the project has been accepted into the community.

The Director commented that a revocation of the permit would be based upon the failure to comply with the conditions of approval. There are no conditions of approval that define compatibility with a community. The Director explained what has to happen is defining what community compatibility is and create a new condition.

County Counsel indicated he is not suggesting we are going to be able to define community compatibility for revocation of a permit, rather this would show whether the applicant is complying with the conditions in an annual report. They are suggesting just the ability to bring this back to the forefront to see how well it is going in the community.

Supervisor Adams clarified that he is trying to give the community some semblance of faith that this isn't going to become an unattractive nuisance and the students are going to be good community members. He understands when a family moves in you don't know what you are going to get. He wants the operators of this to be good operators and not turn a blind eye and have it become a debacle within the community.

Following brief discussion, Mr. Abbott indicated he detects the Board is interested in a periodic review process to determine if the applicant is in compliance with the conditions of approval. The compatibility questions doesn't really relate to any of the expressed terms and conditions. He can work with staff to develop the language for an annual review process, which doesn't require the applicant to start over every year but to live up to their representations. If there is truly a material issue the County can make a decision with regards to permit revocation.

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Chair Beard noted a 3 year concession by the Board would be a start and if the applicant can't get the cooperation of the students during the 3 year period, then they're not going to get with a 10 year use permit.

Considerable discussion ensued regarding the annual review process.

In response to Supervisor Roen's inquiry, Mr. Abbott clarified that the focus of the annual review is whether the applicant is in compliance with the conditions of approval. Mr. Abbott added it also gives the public an opportunity to state there is a real problem and the County needs to take care of it.

Supervisor Adams indicated he likes the annual hearing review before the Planning Commission so it's public and will need to have some reasonable standards that would trigger the revocation of a permit. With this in place he would go back to a 20 year operating permit with the annual review.

County Counsel clarified there are provisions in the zoning code that state failure to comply with the conditions of approval of a use permit is grounds for revocation. It would have to be a clear violation as stated in the conditions of approval.

The Director concurred and believes there needs to be some standards built into the conditions from which you make your compliance review function.

Mr. Abbott noted the typical things he encounters with land use compatibility deal with hours of operations, external activities including exterior lighting and the biggest one is special events. If they can regulate these things the compatibility issues are resolved.

Following brief discussion the motion of intent was amended and clarified as follows:

Motion of intent to issue a 20 year use permit with an annual compliance review by the Planning Commission - staff to develop reasonable conditions for a reconsideration, suspension or change in the conditions of the permit; the facility is to operate within the existing foot print - no new construction outside of the existing footprint; outside watering on front lawn only during periods of time where the Planning Department believes it is appropriate for the water conditions; a maximum of 50 overnight students, 4 staff and 2 caretakers; language to state what in fact the operational plan of the school is with regards to how it involves its software and/or instruction; and include the 19 conditions of approval outlined in Staff Exhibit 4.

APPROVED. Motion: Adams/Huebner/Majority Roll Call Vote: 3/0/1 (Supervisor Schlefstein ABSENT and Chair Beard NO)

County Counsel clarified that the proposed final documents including the resolution with the conditions of approval memorialized for final action and the ordinance will be

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brought back to the September 1, 2015 meeting. This will not be a continued public hearing and no further public input will be accepted at that time.

Mr. Don Russell, Downieville question where this leaves the appeal.

County Counsel indicted if the Board is going to approve the use permit then they are denying the appeal.

ADJOURN

At 3:46 p.m., with no further business, Chair Beard adjourned the meeting.

JIM BEARD, CHAIR
BOARD OF SUPERVISORS

ATTEST:

HEATHER FOSTER
CLERK OF THE BOARD